

Deborah K. Tellier (State Bar No. 131202)
Paul P. "Skip" Spaulding, III (State Bar No. 83922)
Farella Braun + Martel LLP
Russ Building
235 Montgomery Street
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480

Attorneys for Petitioner
WALTER STORNETTA RANCH

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In re:

APRIL 21, 2010 ORDER REQUIRING TECHNICAL
INFORMATION, CAL. WATER CODE SECTION
13267(b), ORDER NO. R1-2010-0046

Case No. _____

PETITION FOR REVIEW

Petitioner Walter Stornetta Ranch ("Petitioner") submits this Petition for Review of the April 21, 2010 Order Requiring Technical Information Pursuant to California Water Code 13267(b) ("April 21, 2010 Order," attached hereto as Exhibit A) issued by the California Regional Water Quality Control Board, North Coast Region ("Regional Board"). This Petition for Review is filed in accordance with Section 13320 of the California Water Code and Section 2050 of Title 23 of the California Code of Regulations.

Petitioner provides the following information in support of its Petition as required by Section 2050 of Title 23 of the California Code of Regulations:

1. Petitioner is Walter Stornetta Ranch. Petitioner's address is 44100 Stornetta Drive, Manchester, CA 95459, and its telephone number is (707) 882-2051. Petitioner requests that all communications be directed through its counsel, as identified in the caption of this Petition.

2. Petitioner requests that the State Water Resources Control Board ("State Board") review the above-referenced April 21, 2010 Order. Petitioner requests that the State Board hold

1 this Petition in abeyance pursuant to 23 Cal. Code Regs. § 2050.5(d) and State Board practice.

2 3. The Regional Board, through its Executive Officer, Catherine Kuhlman, issued the
3 Order on April 21, 2010.

4 4. In the event this Petition is made active, Petitioner will submit as an amendment to
5 this Petition a full and complete statement of reasons that the April 21, 2010 Order was
6 inappropriate and improper. Among other things, without limitation, the April 21, 2010 Order is
7 inappropriate and improper because: (1) Petitioner is not a proper or appropriate party to be
8 named on the Order; (2) the underlying facts do not disclose that there is a proposed or threatened
9 discharge that could affect the quality of waters of the State; (3) the Regional Board has failed to
10 provide sufficient factual basis to support the Order; and (4) the burden, including costs, of the
11 required reports do not bear a reasonable relationship to the need for the report and the benefits to
12 be obtained from the reports.

13 5. Petitioner is aggrieved because Petitioner is being required to undertake substantial
14 and expensive work that is unsupported by the facts and most appropriately addressed by the
15 Noyo Harbor District, the other discharger named in the April 21, 2010 Order. In the event this
16 Petition is made active, Petitioner will submit as an amendment to this Petition a full and
17 complete statement of the manner in which Petitioner is aggrieved.

18 6. Petitioner requests that the State Board set aside the April 21, 2010 Order or that
19 the State Board direct the Regional Board to set aside the Order, and that the State Board or
20 Regional Board remove or dismiss Petitioner as a named or responding party to the Order.

21 7. In the event this Petition is made active, Petitioner will submit as an amendment to
22 this Petition a complete statement of points and authorities in support of the legal issues raised by
23 this Petition.

24 8. A copy of this Petition for Review and the attached Exhibit A has been sent to the
25 Regional Board and the other interested parties (see Exhibit B).

26 9. Petitioner had no prior formal opportunity to raise issues or objections to the April
27 21 Order because it was issued unilaterally by the Executive Officer of the Regional Board
28 without a hearing or the taking of any evidence. Petitioner is currently discussing certain of these

1 issues with Regional Board staff on an informal basis, but is required by the California Water
2 Code to file this Petition within 30 days of issuance of the April 21, 2010 Order. In the event this
3 Petition is made active, Petitioner will submit as an amendment to this Petition a further statement
4 that the substantive issues and objections raised in this Petition were either raised before the
5 Regional Board or an explanation of why Petitioner was not required or were unable to raise the
6 substantive issues and objections before the Regional Board.

7 10. In the event this Petition is made active, Petitioner will submit as an amendment to
8 this Petition a copy of its request to the Regional Board for preparation of the Regional Board's
9 administrative record concerning this matter.


10 11. Petitioner requests that the State Board hold a hearing at which Petitioner can
11 present additional evidence to the State Board. In the event this Petition is made active, Petitioner
12 will submit as an amendment to this Petition a statement regarding that additional evidence and a
13 summary of contentions to be addressed or evidence to be introduced and a showing of why the
14 contentions or evidence have not been previously or adequately presented, as required under 23
15 Cal. Code Regs. § 2050.6(a), (b).

16 For all the reasons stated herein, Petitioner requests that the State Board set aside the
17 Regional Board's April 21, 2010 Order or direct the Regional Board to set aside the Order, and to
18 remove or dismiss Petitioner as a named or responding party to the Order.

19
20 DATED: May 20, 2010

Respectfully submitted,

21 FARELLA BRAUN & MARTEL LLP

22 
23 By: _____
24 Deborah K. Tellier

25 Attorneys for Petitioner
26 WALTER STORNETTA RANCH
27
28

Exhibit A



**California Regional Water Quality Control Board
North Coast Region**

Geoffrey M. Hales, Chairman



Linda S. Adams
Secretary for
Environmental Protection

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold
Schwarzenegger
Governor

April 21, 2010

Noyo Harbor District
C/o James L. Larson Attorney at Law
311 North McPherson Street
P.O. Box 1369
Fort Bragg, Ca. 95437

Walter Stornetta
45100 Biaggi Road
Manchester, CA 95459

Dear Sirs:

Subject: Order Requiring Technical Information, Water Code Section 13267(b)
Order No. R1-2010-0046

File: Noyo Harbor Spoils

Enclosed is Water Code section 13267(b) Order No. R1-2010-0046 for Noyo Harbor District and Walter Stornetta Ranch. We are issuing this Order for unpermitted placement of uncharacterized, potentially contaminated dredge spoil material at an uncharacterized site, possibly impacting or threatening to impact water quality. Under California Water Code section 13267, the Order contains specific provisions directing you to provide information about the dredge spoil material transported from the Noyo Harbor to the Stornetta Ranch located at 45100 Biaggi Road in Manchester on or around the week of March 23, 2010. The Order further requires submittal of information about the volume(s), characteristic(s), and location(s) of any other Noyo Harbor and River channel dredge spoils transported to offsite locations since September 1, 2006.

Also enclosed is a copy of the appeal process. Please note, however, that if you choose to appeal the enclosed Order, you must comply with the terms of the Order while your appeal is being considered.

If you have any questions regarding the Order, you may contact Diana Henriouille at (707) 576-2350 or by email at dhenriouille@waterboards.ca.gov

Sincerely,

Catherine Kuhlman
Executive Officer

California Environmental Protection Agency

Recycled Paper

100421_Noyo Spoils_13267b_trans

Certified – Return Receipt Requested

Enclosures:

- 1) Water Code Section 13267(b) Order No. R1-2010-0046
- 2) Appeal Process

cc: Chris D. Brown, MA AICP, Air Pollution Officer, Mendocino County Air Quality
Management District, 306 E. Gobbi St., Ukiah, CA 95482
Angie Hamilton, Code Enforcement Officer, Mendocino County Department of
Planning and Building Services, 790 South Franklin, Fort Bragg, CA 95437
Warden Eric Bloom, California Dept. of Fish and Game, Marine Region, P. O.
Box 1729, Fort Bragg, CA 95437



Alan C. Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

Appeals Process

The following is the process for appealing an action or failure to act by the Regional Water Quality Control Board, North Coast Region (Regional Water Board). The Regional Water Board routinely requires the submittal of technical reports and plans, requires investigation and cleanup of discharges of waste, adopts waste discharge requirements and water reclamation requirements, takes enforcement actions, revises the Water Quality Control Plan, and takes other actions as the principal state agency with responsibility for the coordination and control of water quality in the North Coast Region. Persons affected by decisions of the Regional Water Board have the right to appeal most of those decisions. The process is as follows:

1. Informal reviews of staff decisions may occur at any time upon request. The Executive Officer will schedule a meeting to consider your case and discuss your alternatives for compliance. You will be advised of additional review procedures available to you.
2. If you are not satisfied with a decision of the Executive Officer, you may request that the decision be reviewed by the Regional Water Board at a public meeting. The written request for review should be received by the Regional Water Board at least 45 days in advance of the meeting where the decision will be reviewed and should set out the basis for the review. *See reverse side for a description of the Regional Water Board's hearing protocols.*
3. You may file more formal petitions with the State Water Resources Control Board (State Water Board) under Section 13320 of the California Water Code (CWC) for review of specified actions of failures to take action by the Regional Water Board, which includes some actions that have been delegated to the Executive Officer. The petition process is quasi-judicial; copies of the laws and regulations applicable to filing a petition will be provided to you upon request. Petitions must be filed within 30 days of an action or refusal to act.
4. A responsible party who is eligible for reimbursement from the State Water Resources Control Board (State Water Board) Petroleum Underground Storage Tank Cleanup Fund (Fund), and who believes his/her corrective action plan for the site has been satisfactorily implemented, but has not been granted closure, may petition the Fund Manager for review of their case. Petitions should be submitted only after: (1) claimant has completed their approved corrective action plan; (2) claimant has requested that no further action be required from the regulatory agency; and (3) the regulatory agency has denied closure. A responsible party who is not eligible for reimbursement from the Fund, and who meets the above criteria, may directly petition the SWRCB to review the case.
5. Judicial review is the last remedy available to you. You may request judicial review of a State Water Board decision. You may appeal to a Superior Court under section 13330 of the CWC within 30 days after receiving a State Water Board order.

A description of the Regional Water Board's authority and process for investigating discharges of waste is contained in State Water Board Resolution No. 92-49, titled "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304."

If you have any questions, contact the Regional Water Board at (707) 576-2220.

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2010-0046

REQUIRING TECHNICAL INFORMATION
PURSUANT TO WATER CODE SECTION 13267(b)

FOR

Noyo Harbor District
And
Walter Stornetta Ranch

Noyo Harbor Dredge Spoils

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Noyo Harbor District stockpiles dredge material (spoils) from the Noyo River and Harbor Channels at an "upland receptacle" adjacent to the Harbor.
2. Historically, Noyo Harbor spoils were used for daily cover at the Caspar solid waste disposal site, until the facility closed in the 1990s. In the past 2-3 years, the Harbor District has requested that the Regional Water Board review proposals for upland disposal areas for the dredge spoils, including a proposal to dispose of the dredge spoils at an old quarry located on Campbell Timber lands (Melvin Pyorre's Camp 5 Mine Pit) and another to dispose of them at the Harwood Branscomb woodwaste disposal site.
3. Based on those requests, Regional Water Board staff have repeatedly advised the Harbor District and/or its consultants that the dredge spoils must be properly characterized and shown to be appropriate for disposal in the prospective disposal areas. Furthermore, depending on the characteristics of the waste and the features of the proposed disposal site, staff have advised the Harbor District and/or its consultants that disposal of the dredge spoils may be subject to conditions or permitting requirements to ensure that the dredge spoils do not adversely impact receiving waters.
4. Test Information:
Information provided by the Harbor District in early 2009, based on 30 grab samples of dredge spoils collected May 22 and 23, 2008, from the upland receptacle, combined into 5 composites (Noyo Harbor District Soil Evaluation, Weston Solutions, Inc., June 2008), showed concentrations of arsenic in excess of the California Human Health Screening Levels (CHHSLs, used to screen soils for residential or industrial land uses). In addition, the samples contained a number of polynuclear aromatic hydrocarbons (PAHs), and

concentrations of a number of metals above the soluble threshold level concentration (STLC). One of the five composite samples contained PCBs.

The Harbor District's consultant, Weston Solutions, Inc., submitted a report in October 2009 providing test results of samples collected in June 2009 from material located within the Noyo River and Harbor channel, this time reporting on four samples composited into a single sample, and again showing that a number of metals concentrations exceeded the STLC. The sample also contained a number of PAHs. Neither of the reports includes information about dioxin; Weston Solutions, Inc. advised staff by email that dioxin had not been included "because there is no current or historical source, probable or otherwise, within the Noyo River watershed" and, further, "According to historical records, a sawmill located three miles upstream (1852-1854) and at the mouth of the river (1858-1886) that produced rough cut lumber, a process that did not employ chlorine, the constituent necessary in the lumber processing industry for the creation of the by-product Dioxin."

5. On April 27, 2009, Regional Water Board staff approved a proposal to use dredge spoils from the entrance of the Noyo Harbor to reclaim Melvin Pyorre's old quarry site, known as the Camp 5 Mine Pit. The approved project would have involved placement of 47,000 cubic yards of spoil material on wide benches in a 3:1 slope and blending the spoil material with onsite soils as necessary to provide an optimal mix for growing native coastal vegetation. Runoff from the reclaimed quarry area would be captured in three downstream sediment basins.

As support for its approval of the disposal of the dredge spoils at this site and in this manner, the Regional Water Board staff noted that analyses by Weston Solutions of composite samples taken from the Noyo Harbor District upland disposal site for contaminants historically measured in Noyo Harbor sediments, revealed that contaminant levels were very low. (Noyo Harbor District Soil Evaluation, Weston 2008). Following issuance of the April 27th approval letter, Regional Water Board staff were advised that the landowner, Campbell Timber Company, had decided against using dredge spoils for reclaiming the quarry because the property might be developed for residential use in the future, and some of the contaminants in the dredge spoils exceeded residential CHSL levels.

6. On September 8, 2009, Regional Water Board staff met with representatives of the Harbor District, its consultant (Recovery Operation Specialty Services or "ROSS"), the Mendocino County Planning and Building Department, the Mendocino County Solid Waste LEA, and representatives of Harwood Branscomb, to discuss using and/or disposing of the spoils at the Harwood Branscomb woodwaste disposal site. Regional Water Board staff advised the Harbor District and Harwood representatives that the material must be characterized, shown to be suitable for use/disposal at the site and able to be

used/disposed of at the site in a manner that would not create or exacerbate adverse impacts to water quality. Regional Water Board staff also indicated that the Harwood woodwaste disposal site was subject to requirements under Waste Discharge Requirements (WDRs) and a Cleanup and Abatement Order, that the Harwood representatives would need to provide information about the woodwaste disposal site, as required by those Orders, and that use/disposal of the spoils at the woodwaste disposal site was contingent on Harwood's compliance with the Orders and a revision of the existing WDRs to allow the spoils to be used/disposed of at the site.

7. On March 22, 2010, Regional Water Board staff met with representatives of Harwood and its consultant, SHN, to discuss again using and/or disposing of the spoils at the Harwood woodwaste disposal site. Regional Water Board staff again indicated that the material must be properly characterized and shown to be appropriate for proposed use/disposal at the site, that it be used/disposed of in a manner protective of water quality, and that its use/disposal at the site is contingent on Harwood's compliance with outstanding requirements of the WDRs and CAO, and a revision of the permit for the site.
8. On March 23, 2010, Regional Water Board staff attended the Mendocino Environmental Crimes Task Force meeting, and learned from representatives of Mendocino County that spoil material from Noyo Harbor was being trucked away. Following the Task Force meeting, Mendocino County staff investigated further and reported that a convoy of trucks was proceeding from the staging area at the Harbor to the Stornetta Ranch at 45100 Biaggi Road. The Mendocino County staff representative indicated that she had counted 37 trucks, mostly tandem. She also reported that Harbor District staff advised her that they give away the dredge spoils for free to anyone who asks for it.
9. Regional Water Board staff have contacted representatives of both the Stornetta Ranch and the Harbor District and have received confirmation from both that dredge spoils from the Harbor were transported to the Stornetta Ranch. Regional Water Board staff understand that the spoils will remain where they have been placed at the Stornetta Ranch pending further investigation.
10. At this time, Regional Water Board staff do not know how much dredge spoil material is involved, the composition/characteristics of the material, nor the proposed method(s) of use and/or location(s) of disposal of the dredge spoils at the Stornetta Ranch site. However, as noted above dredge spoils from the Noyo River and Harbor Channels have been historically recognized to be, and should be handled as a contaminated, rather than an inert material. Past analyses of samples from the stockpile at the upland receptacle and from the Harbor Channels have shown levels of metals and other contaminants that may pose a threat to water quality and/or human health and the environment, depending on the method and location of use/disposal.

11. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to make the following requirements for persons suspected of discharging waste that could affect the quality of waters within this region:

- Section 13260 (a) – *“All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board: (1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.”*
- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
- Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”* The burden, including costs, of the reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.
- Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*

12. All of the technical reports required by this Order are necessary to address the potential water quality threat posed by the improper use and disposal of dredge spoils.
13. This unpermitted placement of uncharacterized, but potentially contaminated waste material, in an uncharacterized location may be impacting or threatening to impact receiving waters, both surface and ground, as well as posing a threat to public health and the environment. The burden, including costs, of the reports

required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.

14. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with Section 15321, Chapter 3, title 14, California Code of Regulations.
15. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs.
16. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13267(b) the Discharger shall:

1. By May 11, 2010, submit a technical report to the Regional Water Board providing the following information:
 - a. Quantity of Noyo River and Harbor Channels dredge spoils transported to Stornetta Ranch.
 - b. Information about other dredge spoil disposal since September 1, 2006, the date of the most recent Regional Water Board Clean Water Act section 401 Water Quality Certification for dredging of the entrance of the Noyo River. Please include locations, quantity, dates of disposal, and any available analytical data applicable to the spoils taken by each entity.

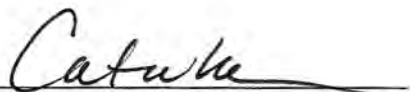
April 21, 2010

- c. Workplan for characterizing the dredge spoils from the Noyo River and Harbor Channels at the Stornetta Ranch. Number of samples tested should be of sufficient quantity to provide information representative of all material located at the site. Constituents to be tested for should include total and soluble metals, PAHs, oil and grease, Aroclor PCBs, Pesticides, Organotins, and 2,3,7,8 TCDD (dioxin).
2. By June 10, 2010, submit a report presenting the characterization of the dredge spoils developed from the implementation of the workplan. The report shall also provide recommendations as to appropriate next steps, that is, whether the spoils should be returned to the Noyo Harbor site, removed for disposal at a properly permitted solid waste disposal site, and/or whether the materials are suitable for use/disposal at the Stornetta site. If the latter option considered, the report shall also present recommendations as to how the material should be stored, handled, etc. at the Stornetta site to ensure appropriate protection of water quality. If the report recommends that the material be removed, it shall also include a schedule for removal of the material.
3. Both reports shall be prepared, signed, and stamped by a California licensed professional engineer with experience in site investigation and cleanups, and waste characterization.

All information provided in response to this Order must include the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Ordered by



Catherine Kuhlman
Executive Officer

April 21, 2010

Exhibit B



FARELLA BRAUN + MARTEL LLP

Attorneys At Law

Russ Building / 235 Montgomery Street
San Francisco / CA 94104

T 415.954.4400 / F 415.954.4480
www.fbm.com

DEBORAH K. TELLIER

dtellier@fbm.com

D 415.954.4970

May 20, 2010

Via Electronic Mail and Federal Express

Ms. Diana Henriouille
California Regional Water Quality
Control Board, North Coast Region
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403

**Re: April 21, 2010 Regional Board Order No. R1-2010-0046 for Noyo Harbor
District & Walter Stornetta Ranch**

Dear Ms. Henriouille:

Enclosed please find a copy of Walter Stornetta Ranch's Petition for Review of the Water Board's California Water Code Section 13267(b) Order dated April 21, 2010. We have transmitted the original Petition and exhibits today to the State Water Resources Control Board for timely filing.

We are filing this protective petition to meet California Water Code requirements. We look forward to working with Water Board staff to resolve our client's concerns regarding the April 21, 2010 Order. Thank you.

Sincerely,

Deborah K. Tellier

DKT/s
enclosure
(via email/pdf)

cc: Mr. James L. Larson, Noyo Harbor District
Chris D. Brown, Mendocino County AQMD
Angie Hamilton, Mendocino County, Dept. of Planning and Building Services
Warden Eric Bloom, Cal. Dept. of Fish and Game

25628\2262569.1